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JANUARY 16, 2001

Charles Maddox, Esq.
Inspector General
District of Columbia
717 14th Street, NW
Washington, DC 20005

Dear Mr. Maddox:

I am writing to you in my capacity as Special Master in Petties v. D.C. et al., Civil Action No. 95-0148 (PLF). Pursuant to an Order of Reference, Judge Paul Friedman appointed me to this position in July 1997.

The purpose of this letter is to correct certain statements contained in the Inspector General's "Audit of the District of Columbia Public Schools Special Education Program," dated November 22, 2000. Specifically, Finding 3 ("Administration of Special Education Nonpublic Programs"), states:

The U.S. District Court fined DCPS \$2.5 million in connection with a class action suit concerning late payments. DCPS included steps in its exit plan to the class action suit that describes measures to improve the review of invoices and ensure timeliness of payments. Based on this good faith effort, the Court has waived the original fines.

This statement suggests that DCPS currently has no fiscal liability arising under Petties. As this substantially misrepresents the extent of the District's exposure, it is necessary to correct the record. The record should reflect the following account of Court Orders pertaining to fines arising under Petties.

1. The Imposition of Fines. On June 29, 1995, the Court entered an Order requiring DCPS to make timely payments to providers of special education and related services. After several instances of noncompliance, the Court issued an Order on September 11, 1995, imposing fines for all late payments in the future. The Order reads, in part,

A fine in the amount of \$5,000 per day shall be assessed against defendants for each calendar day that defendants are not in full compliance with paragraph 4 above for the first five calendar days of noncompliance; thereafter a fine in the amount of \$10,000 per day shall be assessed against the defendants for each of the next five calendar days that defendants remain in noncompliance with paragraph 4 above; thereafter a fine in the amount of \$15,000 per day shall be assessed against defendants for each of the next five calendar days that defendants remain in noncompliance with paragraph 4 above.

2. The Collection of Fines in 1995 and 1996. Pursuant to the September 11, 1995 Order, defendants were required to pay fines totaling approximately \$340,000 during late 1995 and early 1996. The fines were placed in an interest bearing account and are currently available for use by the defendants under Section IV of the Exit Plan.
3. The Continuing Accrual of Fines. At present, fines accrue whenever defendants fail to make a payment in a timely manner. For each month in which the defendants fail to make a timely payment, the fine will range from \$5,000 to \$150,000, depending on the length of delay in payment. The amount that has accrued since the date of the September 11, 1995 Order has been calculated from time to time and is currently under review by the independent auditor appointed under the August 5, 2000, Consent Order. The amount owed is likely to be in excess of five million dollars, less the amount of the abatement described below.
4. The Partial Abatement of Fines. On December 22, 1997, the Court entered an Order, upon the recommendation of the Special Master and agreed to by the parties, establishing a Schedule for the Partial Abatement of Fines and Imposition of Additional Fines Based on the Acquisition of Buses. The Schedule permitted the *partial* abatement of accrued, but uncollected, fines that defendants owed pursuant to the Court's Order of September 11, 1995. The Schedule provided that specified amounts would be abated if defendants: (1) executed contracts for the lease of 300 new school buses to serve children with special education needs, and (2) took possession of those buses during the spring of 1998. In a report dated May 3, 1999, the Special Master recommended that the Court abate \$2,250,000 in fines owed by defendants but never collected. Both parties agreed that defendants were entitled to this abatement and the Court commended defendants for the efforts that led to this significant abatement.¹

¹ The Special Master also recommended that \$400,000 in new fines be imposed and collected because a number of the newly acquired buses were not serving routes within the time frame specified in the agreed upon Schedule as DCPS had not hired a sufficient

5. The Process for Abatement or Collection of Outstanding Fines. With respect to the collection of fines that have accrued, the Court addressed this matter in an opinion dated July 9, 1999. In adopting an Exit Plan for the Petties litigation, the Court stated:

Upon review of the Exit Plan proposed by the parties, the Court concludes that it is a reasonable and creative way to provide the assurances necessary to bring this case to resolution. The Court therefore will approve the proposed Exit Plan, and the Exit Plan attached to this Order hereby is adopted and incorporated into this Order.

At the time that the parties submitted their joint memorandum, defendants also indicated that in connection with the implementation of the Exit Plan, they would propose a schedule for abatement of fines that they currently owe for past violations of the Court's Orders in this case, but that have not yet been collected. After a consultation with the Special Master, defendants have submitted a proposed plan for the abatement of fines, and plaintiffs have filed a response. Upon consideration of the proposal and the response, the Court will adopt a plan for the abatement of fines as proposed by defendants and as described below.

Up to twenty-five percent of the accrued fines may be abated for the completion of each of four objectives in the Exit Plan: Object 2 (punctuality of transportation); Objective 3 (compliance with ride time standards); Objective 10 (receiving and addressing complaints about transportation); and Objective 22 (timely payments to non-DCPS special education providers). For each of these four objectives, when defendants make their submission to the Special Master proposing closure of that objective, they will confer with plaintiffs and with the Special Master regarding the precise standard for measuring the percentage of the outstanding fines, up to twenty-five percent of the accrued fines for each objective, that should be abated based on the particular showing of completion with respect to that objective.

After the Court has closed any of those four objectives, the parties jointly shall move for an abatement of fines for the completion of that objection. If the parties cannot agree on the percentage of the proposed abatement, defendants shall file a motion for a proposed abatement and plaintiffs shall respond within ten days. Under no circumstances will any

number of drivers to drive those buses. The Court ordered the defendants to pay this fine over a four-month period in late 1999. This money was also deposited in the interest bearing account for use by the defendants under the Exit Plan.

abatements be awarded until all of the remaining nineteen objectives have been closed by the Court.

No additional fines are associated with the Exit Plan or with the plan for abatement of fines. The Special Master will monitor the defendants' progress in achieving the twenty-three objectives, and if the Special Master determines that defendants are not making reasonable progress toward the completion of the objectives, she may recommend that the Court issue an Order to Show Cause concerning collection of the outstanding fines.

In conclusion, it should be clear that the Court has not forgiven all fines owed by the defendants, nor have any fines been forgiven on the basis that "DCPS included steps in its exit plan . . . that describes measures to improve the review of invoices and ensure timeliness of payments." It is not clear whether the defendants who were interviewed for the Inspector General's Audit were actually under the belief that there are no outstanding fines owed, or unintentionally conveyed that impression to the staff of the Inspector General. In either case, however, it is important for your Office to understand that the defendants could be subject to further fines unless reasonable progress is made on the objectives of the Exit Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Elise T. Baach". The signature is fluid and cursive, with the first name "Elise" being more prominent than the last name "Baach".

Elise T. Baach
Special Master

cc: Paul Vance, Superintendent
Maria Amato, Esq.
Veleter Mazyck, Esq.
Grace Lopes, Esq.
Beth Goodman, Esq.
Elizabeth Grezyck, Esq.